

Republic of the Philippines  
Supreme Court  
Manila

EN BANC

JORGE JOAQUIN V. SANTOS,  
Petitioner,

G.R. No. 267675

Present:

GESMUNDO, C.J.,  
LEONEN,  
CAGUIOA,  
HERNANDO,\*  
LAZARO-JAVIER,  
INTING,\*\*  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,\*\*\*  
ROSARIO,\*\*\*\*  
LOPEZ, J.,\*\*\*\*\*  
DIMAAMPAO,  
MARQUEZ,\*\*\*\*  
KHO, JR., and  
SINGH,\*\*\*\*\* JJ.

— versus —

CAROLINE H. SANTOS,  
Respondent.

Promulgated:

May 20, 2025

X-----  
DECISION

LOPEZ, M., J.:

- \* On official business but joined the dissent of J. Lazaro-Javier.
- \*\* On official business but left a concurring vote.
- \*\*\* On official leave.
- \*\*\*\* On official leave but left a concurring vote.
- \*\*\*\*\* On official business.
- \*\*\*\*\* On official leave but left a concurring vote.
- \*\*\*\*\* On leave.

A husband and wife who seek legal separation from each other invoke converse rather than identical reliefs. Each spouse claims to be the sole innocent party in a marriage where only the other has given a ground for legal separation. For this reason, one spouse's action for legal separation against the other does not automatically bar the respondent-spouse from filing their own petition for legal separation on the basis of *litis pendentia*.

This resolves a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the March 18, 2021 and May 24, 2023<sup>2</sup> Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 168314. The assailed Resolutions dismissed Jorge Joaquin V. Santos's (Jorge) Rule 65 petition for being the wrong remedy to question the trial court's dismissal of his petition for legal separation<sup>3</sup> on the grounds of *litis pendentia* and deliberate forum shopping.

### Facts

Jorge and respondent Caroline Santos (Caroline) were married on July 7, 1996 and had three children during their marriage—Niki, Sam, and Jake. In 2006, Jorge began to suspect that Caroline was having an affair with one Paco Magsaysay and possibly other men, causing the once-happy couple to fight almost every day. In 2008, Caroline was diagnosed with the sexually transmitted disease *chlamydia*. Jorge got tested as well, but his result was negative.<sup>4</sup>

On March 25, 2014, Caroline filed *Civil Case No. 14-400-CV*, a Petition for Legal Separation with Application for Provisional Order of Child Custody and Spousal and Child Support<sup>5</sup> before Branch 144 of the Regional Trial Court (RTC) of Makati City, on the grounds of Jorge's repeated "physical, emotional and economic abuse" against her and their three children,<sup>6</sup> and Jorge's alleged illicit relationship with one Lenny Delos Santos since 2006.<sup>7</sup> Caroline's Petition described how Jorge withheld financial support<sup>8</sup> and cursed at and hit their children.<sup>9</sup>

<sup>1</sup> *Rollo*, pp. 12–58.

<sup>2</sup> *Id.* at 60–63, 68. The Resolutions dated March 18, 2021 and May 24, 2023 (the last page of the Resolution containing the dispositive portion may have been inadvertently not appended in the *rollo*) in CA-G.R. SP No. 168314 were penned by Associate Justice Walter S. Ong and concurred in by Associate Justices Nina G. Antonio-Valenzuela and Reynold R. Lauigan of the Special Sixteenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 165–169, 203–206. The Orders dated December 7, 2020 and January 5, 2021 were penned by Presiding Judge Robert Victor C. Marcon of Branch 3-FC, Regional Trial Court, Makati City.

<sup>4</sup> *Id.* at 14–16.

<sup>5</sup> *Id.* at 17, 207–221.

<sup>6</sup> *Id.* at 210. See FAMILY CODE, art. 55(1).

<sup>7</sup> *Id.* at 209–210. See FAMILY CODE, art. 55(8).

<sup>8</sup> *Id.* at 209–210, 213. See FAMILY CODE, art. 55(8).

<sup>9</sup> *Id.* at 210, 212.

In his Answer, Jorge countered that Caroline herself had committed sexual infidelity. Thus, even assuming that Caroline's allegations against him were true, she is not entitled to the relief of legal separation.<sup>10</sup>

Sometime in 2015, while Caroline's Petition was still being tried, Jorge came to know of Caroline's affair with a married man, a certain Juan Tomas Cuenca (Juanto).<sup>11</sup> He was able to confirm this information from his hired private investigators,<sup>12</sup> as well as through their youngest son Jake, who would often see Caroline and Juanto together and who once discovered their lewd text exchanges.<sup>13</sup> The events prompted Jorge to file two criminal cases for adultery against Caroline and Juanto in February 2016.<sup>14</sup> A month later, Caroline filed a criminal complaint against Jorge for violation of Republic Act No. 9262,<sup>15</sup> which was dismissed by the city prosecutor.<sup>16</sup>

Meanwhile, acting on Jorge's demurrer to evidence in *Civil Case No. 14-400-CV*, Branch 136, RTC of Makati City issued an Order dated July 10, 2019, dismissing Caroline's petition for legal separation.<sup>17</sup> The trial court ruled that Caroline failed to sufficiently prove Jorge's repeated violence or grossly abusive conduct towards her or their children.<sup>18</sup>

When Caroline appealed the dismissal of her legal separation case, Jorge filed his own Petition for Legal Separation, *Civil Case No. R-MKT-20-01893-CV*,<sup>19</sup> with Branch 3-FC, RTC, Makati City. Jorge alleged that Caroline engaged in illicit sexual relationships<sup>20</sup> and inflicted physical harm and is abusive towards their son Jake.<sup>21</sup> Caroline sometimes hit Jake<sup>22</sup> and exposed the child to her extramarital affairs by introducing her boyfriend to family members and bringing him to school events. Caroline's act of normalizing her adulterous relationship not only caused embarrassment and anxiety to their children, but also disrespected the sanctity of marriage.<sup>23</sup> Notably, his Certification against Forum Shopping disclosed that he had pending criminal cases against Caroline for adultery.<sup>24</sup>

In her Answer with Compulsory Counterclaims<sup>25</sup> to Jorge's Petition, Caroline pointed out that Jorge himself was guilty of acts which are grounds

<sup>10</sup> See FAMILY CODE, art. 56(4) which states: "The petition for legal separation shall be denied on any of the following grounds: ... (4) Where both parties have given ground for legal separation[.]"

<sup>11</sup> *Id.* at 17.

<sup>12</sup> *Id.* at 17, 136.

<sup>13</sup> *Id.* at 18, 137.

<sup>14</sup> *Id.* at 18, 146. Jorge's Petition for Review states that the criminal information was filed with Branch 216, Regional Trial Court, Quezon City, while the Certification against Forum Shopping in his Petition for Legal Separation states that the same was filed with the Branch 42, Regional Trial Court, Quezon City.

<sup>15</sup> Titled "The Anti-Violence Against Women and Their Children Act of 2004."

<sup>16</sup> *Rollo*, p. 19.

<sup>17</sup> *Id.* at 222-225.

<sup>18</sup> *Id.* at 224-225.

<sup>19</sup> *Id.* at 132-148.

<sup>20</sup> *Id.* at 139. See FAMILY CODE, art. 55(8).

<sup>21</sup> *Id.* at 141. See FAMILY CODE, art. 55(1).

<sup>22</sup> *Id.* at 141-142.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 146-147.

<sup>25</sup> *Id.* at 149-164.

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for legal separation.<sup>26</sup> Hence, he is not entitled to the relief sought. By way of affirmative defense, Caroline argued that her Petition for Legal Separation then pending review before the CA constituted *litis pendentia*, which renders Jorge's Petition dismissible. In addition, Jorge committed forum shopping by splitting his cause of action against Caroline among the two pending legal separation cases and two criminal cases for adultery.<sup>27</sup>

Branch 3-FC, RTC, Makati City ruled in favor of Caroline, finding that both *litis pendentia* and forum shopping were obtained in this case in light of Caroline's first legal separation petition, which was then on appeal before the CA. The trial court observed that Jorge's allegations in his Answer in the first legal separation case are the same grounds used in his action for legal separation against Caroline. The RTC dismissed Jorge's Petition for Legal Separation with prejudice<sup>28</sup> and subsequently denied Jorge's Motion for Reconsideration.<sup>29</sup>

Aggrieved, Jorge filed a Rule 65 Petition with the CA,<sup>30</sup> which was dismissed outright for being the wrong remedy. In the assailed March 18, 2021 Resolution, the CA held that the Makati RTC's Order dismissed Jorge's Petition with prejudice,<sup>31</sup> thus, it should have been questioned via an ordinary appeal under Rule 41 of the Rules of Court.<sup>32</sup>

The CA likewise denied Jorge's Motion for Reconsideration in the assailed May 24, 2023 Resolution.<sup>33</sup>

As for the first legal separation case filed by Caroline against Jorge, the CA eventually dismissed the Petition with finality.<sup>34</sup> The CA ruled that Caroline's allegations of repeated physical violence against Jorge were not backed by substantial evidence or had legally prescribed.<sup>35</sup>

### Issue

Jorge now appeals, raising the sole issue of whether the trial court committed grave abuse of discretion when it dismissed his Petition for Legal Separation with prejudice on the grounds of *litis pendentia* and willful violation of the rules on forum shopping.

<sup>26</sup> *Id.* at 152–155. See FAMILY CODE, art. 56(4).

<sup>27</sup> *Id.* at 156–157.

<sup>28</sup> *Id.* at 165–169. The Order dated December 7, 2020 in Case No. R-MKT-20-01893-CV was penned by Presiding Judge Robert Victor C. Marcon of Branch 3-FC, Regional Trial Court, Makati City.

<sup>29</sup> *Id.* at 203–206.

<sup>30</sup> *Id.* at 69–109.

<sup>31</sup> *Id.* at 62.

<sup>32</sup> RULES OF COURT, Rule 41, sec. 1(g) in relation to Rule 7, sec. 5.

<sup>33</sup> *Id.* at 66–68. The last page of the Resolution containing the dispositive portion may have been inadvertently not appended in the *rollo*.

<sup>34</sup> *Id.* at 19.

<sup>35</sup> The Decision dated June 22, 2021 in CA-G.R. No. CV-114001 was penned by then CA Presiding Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Pedro B. Corales and Alfredo D. Ampuan of the First Division, Court of Appeals, Manila.

Jorge asserts the following: *First*, the second legal separation case was not barred by the first on the basis of *litis pendentia*, because the first case only dealt with the issue of whether Caroline was entitled to a judicial decree of legal separation, while the second case would resolve whether Jorge was entitled to a decree of legal separation. In this regard, Jorge emphasizes that he never admitted that he and Caroline were guilty of grounds for legal separation. On the contrary, he maintained his innocence as the sole wronged spouse in both the first and second cases.

*Second*, not all of the elements of *litis pendentia* were present. While he admits that there is identity in the parties involved in the first and second legal separation cases,<sup>36</sup> Jorge points out that the primary ground for legal separation in Caroline's Petition is his alleged repeated physical violence against Caroline and abuse of their three children. His defense is that Caroline had committed sexual infidelity with Paco Magsaysay and, thus, she is not entitled to the relief sought. On the other hand, Jorge's Petition for Legal Separation against Caroline, the second action, was based on her subsequent sexual infidelity with a different man, Juanto Cuenca, and her repeated abuse of their son Jake. Therefore, there is no identity of rights asserted and reliefs sought; nor would a final decision on the first case bar the second one based on *res judicata*.

*Third*, assuming Jorge committed forum shopping by filing a Petition for Legal Separation while Caroline's legal separation case against him was pending appeal, this does not constitute willful disregard of the rules that calls for dismissal with prejudice. His failure to mention Caroline's Petition for Legal Separation in his certificate of non-forum shopping was in good faith, since he believed that he only had to include those cases which he himself initiated in court. To bolster this argument, Jorge points out that he disclosed the criminal cases he filed against Caroline for adultery in the same certification.<sup>37</sup>

### *Ruling*

We grant the Petition.

The sole question raised in this case is one purely of law and within the scope of a Rule 45 petition for review; that is, whether one spouse's petition for legal separation against the other bars the respondent spouse from filing his or her own petition for legal separation based on *litis pendentia*. Resolving this issue necessarily touches on the related issue of whether Jorge committed deliberate forum shopping by filing the present case. In determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur.<sup>38</sup>

<sup>36</sup> *Rollo*, pp. 65–68.

<sup>37</sup> *Id.* at 41–42.

<sup>38</sup> *Lajave Agricultural Management and Development Enterprises, Inc. v. Spouses Javellana*, 842 Phil. 1119, 1130 (2018) [Per J. Peralta, Third Division].

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To start, the Court rules that one spouse's petition for legal separation against the other does not constitute *litis pendentia* which bars the latter spouse from filing his or her own petition for legal separation. The very nature of legal separation precludes *litis pendentia* from setting in when two spouses file legal separation cases against each other.

Nevertheless, for reasons of public policy to be discussed below, we hold that henceforth, while a legal separation case is pending before a court, should the respondent-spouse file his or her own legal separation case against the petitioner-spouse, the succeeding case should be dismissed without prejudice, until the first case filed has been resolved with finality, whether or not on its merits.

*Litis pendentia did not obtain between the first and second legal separation cases; only the first requisite was present*

As affirmed by recent case law,<sup>39</sup> *litis pendentia* refers to a situation where another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.<sup>40</sup> Its three requisites are (1) identity of the parties—or the interest they represent—in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity between the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.<sup>41</sup>

The underlying principle of *litis pendentia* is that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This is founded on the public policy that an issue should not be the subject matter of controversy in multiple courts to avoid possible conflicting judgments. Consequently, a party cannot split up a single cause of action into several suits because the whole cause must be determined in one action.<sup>42</sup>

In this case, We agree that only the first requisite of *litis pendentia* which is the identity of parties is present since the two cases both involve Jorge and Caroline. Notably, the second and third requisites are lacking because there is no identity in the rights and reliefs they asserted, and there is no such identity in the two cases such that judgment in one would, regardless of which party wins, amount to *res judicata* in the other. Thus, it was erroneous for the RTC to have ruled that:

<sup>39</sup> *Seloza v. Onshore Strategic Assets (SPV-AMC), Inc.*, 886 Phil. 452, 463 (2020) [Per J. Leonen, Third Division].

<sup>40</sup> *Yap v. Chua*, 687 Phil. 392, 400 (2012) [Per J. Reyes, Second Division].

<sup>41</sup> *Id.* See also *De Pedro v. Romasan Development Corporation*, 748 Phil. 706 (2014) [Per J. Leonen, Second Division], citing *Guevara v. BPI Securities Corporation*, 530 Phil. 342, 358–359 (2006) [Per J. Chico-Nazario, First Division]; *Jaban v. City of Cebu*, 467 Phil. 458, 471 (2004) [Per J. Callejo, Sr., *En Banc*].

<sup>42</sup> *Lajave Agricultural Management and Development Enterprises, Inc. v. Spouses Javellana*, 842 Phil. 1119, 1129 (2018) [Per J. Peralta, Third Division].

The court also notes that the grounds for legal separation raised in the [first] case are the same in the instant case, to wit:

....

3.4. As will be proven in trial as may be necessary, [Caroline] was suspected to and proven to have an intimate or illicit relationship with other people during the marriage.

3.5. [Caroline] also repeatedly verbally abused and constantly nagged [Jorge].

3.6. [Jorge] reserve[d] the right to elaborate on the abuses of [Caroline] so as not to prejudice any possible reconciliation between the parties.

The only difference is that in the [first] case, [Jorge] asked the court to dismiss the [first] case filed by [Caroline] . . . , while in this case he now asks the court to grant his prayer for legal separation. Indeed, this case is based on essentially the same causes of action as in the [first] case. Clearly then, the requisites of *litis pendentia* are present.<sup>43</sup>

Contrary to the RTC's conclusion that *litis pendentia* existed as Jorge's causes of action against Caroline in the first case were likewise his causes of action against her in the second case, the record shows that the grounds for legal separation raised by each spouse against the other are different. Jorge's Answer in the first legal separation case emphasized the issue that Paco was Caroline's alleged paramour, while Juanto and Caroline's relationship was the subject of the second case, which further alleged her grossly abusive conduct towards their son Jake.

In truth, the grounds for each spouse's petition against the other were irrelevant to determining whether *litis pendentia* was obtained.

*In legal separation cases filed against each other, spouses assert converse rather than identical rights and reliefs; thus, the second requisite is absent*

Here, Jorge and Caroline never asserted identical rights or prayed for identical reliefs as required under the second element of *litis pendentia*. Rather, the spouses asserted reciprocal causes of action against each other, each claiming to be the innocent spouse in a marriage warranting legal separation under the relevant provisions of the Family Code.

In Caroline's Petition for Legal Separation against Jorge, she prayed to be declared legally separated from Jorge as the allegedly innocent spouse prejudiced by the subsistence of her marriage to him. The right or relief she sought from the RTC was not just a decree of legal separation, but all its legal

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<sup>43</sup> *Rollo*, pp. 204-205.

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consequences, i.e. the right to live away from Jorge;<sup>44</sup> the dissolution and liquidation of their absolute community and the exclusion of Jorge as the offending spouse from any share of its profits;<sup>45</sup> custody of a minor child;<sup>46</sup> Jorge's disqualification from inheriting from Caroline by intestate succession and automatic revocation of any disposition in his favor previously made in her will;<sup>47</sup> the right to revoke her donations to him and his designation as the beneficiary of her insurance policy;<sup>48</sup> the right of third parties to revoke any donation *propter nuptias* made in his favor;<sup>49</sup> and the sole right to be supported after final judgment.<sup>50</sup>

Jorge, in turn, could only deny the charges against him<sup>51</sup> and raise the defense that even assuming he were guilty of any of them, Caroline herself had committed sexual infidelity and thus, was not entitled to any of the reliefs she sought.<sup>52</sup> His cause of action against Caroline then was in defense of the subsistence of their marriage and absolute community and is asking for the denial of Caroline's Petition for Legal Separation against him.

On the other hand, in Jorge's Petition for Legal Separation or the second case, his asserted right or cause of action was that of an allegedly innocent spouse prejudiced by Caroline as an offending spouse and by his subsisting marriage with her. The reliefs he prayed for were the same reliefs prayed for by Caroline, because they are the reliefs to which all innocent spouses are entitled upon a decree of legal separation. But they were by no means the same rights or reliefs he asserted or could have asserted in the first legal separation case, where he was being charged as the respondent/offending spouse. There, he was arguing in defense of their marriage rather than for their legal separation. Too, Jorge was prohibited from agreeing or compromising on any ground for legal separation.<sup>53</sup> Indeed, where a finding that the petitioner-spouse was also guilty of a ground for legal separation, the same would have resulted in the denial of the Petition rather than a judicial decree of legal separation in his favor, pursuant to Article 56(4) of the Family Code.<sup>54</sup>

<sup>44</sup> FAMILY CODE, art. 63(1).

<sup>45</sup> FAMILY CODE, art. 63(2).

<sup>46</sup> FAMILY CODE, art. 63(3).

<sup>47</sup> FAMILY CODE, art. 63(4).

<sup>48</sup> FAMILY CODE, art. 64.

<sup>49</sup> FAMILY CODE, art. 86(4).

<sup>50</sup> FAMILY CODE, art. 198.

<sup>51</sup> See FAMILY CODE, art. 60, which prohibits a decree of legal separation based upon a stipulation of facts or a confession of judgment. See also A.M. No. 02-11-11-SC, March 4, 2003, Re: Proposed Rule on Legal Separation, secs. 13 and 5(b), the latter of which additionally prohibits the court from declaring the respondent spouse in default even if he or she did not file an answer to the petition for legal separation despite service of summons.

<sup>52</sup> FAMILY CODE, art. 56(4).

<sup>53</sup> A.M. No. 02-11-11-SC, March 4, 2003, Re: Proposed Rule on Legal Separation, sec. 13(3).

<sup>54</sup> FAMILY CODE, art. 56. The petition for legal separation *shall be denied on any of the following grounds:*

- (1) Where the aggrieved party has condoned the offense or act complained of;
- (2) Where the aggrieved party has consented to the commission of the offense or act complained of;
- (3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
- (4) *Where both parties have given ground for legal separation;*
- (5) Where there is collusion between the parties to obtain decree of legal separation; or
- (6) Where the action is barred by prescription. (Emphasis supplied)



Clearly, Jorge could not have prayed for the same relief as Caroline, *i.e.* legal separation, in the first legal separation case. As such, there was no identity of the rights asserted and relief prayed for by Jorge in the first and second legal separation case, although both cases revolved around the same sets of facts.

*The first and second cases do not pass the test of identity, or the third requisite*

The third requisite of *litis pendentia*—identity between the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other – also did not obtain in this case. The third requisite or the so-called “test of identity,” dictates that:

A plea of the pendency of a prior action is not available unless the prior action is of such a character that, had a judgment been rendered therein on the merits, such a judgment would be conclusive between the parties and could be pleaded in bar of the second action.<sup>55</sup>

Using the test of identity as metric, we hold that there can be no identity of rights asserted and reliefs sought between two spouses’ suits for legal separation against each other such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. This is because the legal provisions unique to actions for legal separation militate against and effectively preclude such a scenario from arising.

The Family Code bars courts from decreeing legal separation based on a stipulation of facts or confession of judgment; the grounds for legal separation must be positively proved.<sup>56</sup> It prohibits parties from obtaining a judicial decree of legal separation where both spouses have given a ground for legal separation or colluded to obtain a decree of legal separation, and mandates that courts deny the petition for legal separation when such prohibitions do obtain.<sup>57</sup> In addition, A.M. No. 02-11-11-SC prohibits the parties from compromising on any ground for legal separation,<sup>58</sup> requires that the respondent-spouse file an answer and, in case the respondent-spouse fails to do so, does not declare the respondent-spouse in default, but instead orders the public prosecutor to investigate whether collusion exists between the spouses<sup>59</sup> and renders the petition dismissible.<sup>60</sup>

<sup>55</sup> *Valencia v. Court of Appeals*, 331 Phil. 590, 604 (1996) [Per J. Panganiban, Third Division], citing *Hongkong & Shanghai Banking Corp. v. Aldecoa & Co.*, 30 Phil. 255, 275 (1915) [Per J. Trent, *En Banc*].

<sup>56</sup> FAMILY CODE, art. 60(1). See A.M. No. 02-11-11-SC, sec. 14(b).

<sup>57</sup> FAMILY CODE, art. 56(1).

<sup>58</sup> A.M. No. 02-11-11-SC, sec. 13(3).

<sup>59</sup> *Id.* at sec. 15.

<sup>60</sup> *Id.* at sec. 16.

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In short, the law always defaults to the continuity and integrity of marriage and absolute community of property. Additional safeguards ensure that legal separation is resorted to only for the most worthy of reasons.

These safeguards are meant to bolster the underpinning State policy of preserving marriage as an inviolable social institution<sup>61</sup> and the foundation of the Filipino family.<sup>62</sup> Thus, in our jurisdiction, actions for legal separation are necessarily adversarial. If not the petitioner-spouse, the prosecuting attorney assigned to a legal separation case is required to appear, see the suit through in behalf of the State, and ensure that no evidence is suppressed or fabricated by the spouses to the end of achieving a mutually sought legal separation.<sup>63</sup> And even if a judicial decree of legal separation were mutually sought by the spouses, the legal provisions governing its incidents and consequences require that there be only one “winning” or innocent spouse and one “losing” or offending spouse, and this must be determined during trial. In the event that neither spouse is innocent, the law dismisses the petition for legal separation and protects the integrity of the marriage and community of property.<sup>64</sup>

To better understand how the test of identity applies to cases of legal separation, we now look at the five scenarios which may theoretically arise between the first and second legal separation cases filed by Caroline and Jorge:

(1) Caroline loses the first legal separation case for failure to discharge her burden that Jorge gave a ground for legal separation. This decision on the merits leaves Jorge free to file his own legal separation case, since the first case disposed solely the issue of Caroline’s entitlement to legal separation. It did not resolve the issue of whether Jorge was an innocent spouse entitled to legal separation.

(2) Caroline loses the first legal separation case because of a finding that she herself gave a ground for legal separation and thus, did not come to court with clean hands.<sup>65</sup> Again, this judgment on the merits leaves Jorge free to file his own legal separation case, since the first case disposed only the issue of Caroline’s entitlement to legal separation. It did not resolve the issue of whether Jorge was an innocent spouse entitled to legal separation.

(3) Caroline loses the first legal separation case. While she established that Jorge gave a ground for legal separation, Jorge was able to prove any of the affirmative defenses under Article 56 of the Family Code except the defense of prescription, to wit:

Art. 56. The petition for legal separation shall be denied on any of the following grounds:

<sup>61</sup> See CONST., art. XV, sec. 2. See also FAMILY CODE, art. 1.

<sup>62</sup> See CONST., art. XV, sec. 2.

<sup>63</sup> FAMILY CODE, art. 60(2); A.M. No. 02-11-11-SC, secs. 6(c) and 10(2).

<sup>64</sup> FAMILY CODE, art. 56(4).

<sup>65</sup> *Clavecilla v. Clavecilla*, 937 Phil. 488, 503 (2023) [Per C.J. Gesmundo, First Division].

- (1) Where the aggrieved party has condoned the offense or act complained of;
- (2) Where the aggrieved party has consented to the commission of the offense or act complained of;
- (3) Where there is connivance between the parties in the commission of the offense or act constituting the ground for legal separation;
- (4) Where both parties have given ground for legal separation;
- (5) Where there is collusion between the parties to obtain decree of legal separation; or
- (6) Where the action is barred by prescription.

Such a decision on the merits bars Jorge from filing his own legal separation case, since the first case resolved his non-entitlement to the relief of legal separation granted to an innocent spouse.

(4) Caroline loses the first legal separation case because Jorge was able to prove that her cause of action with regard to the ground for legal separation she raised has prescribed. This leaves Jorge free to file his own legal separation case, since the first case disposed solely the issue of Caroline's entitlement to legal separation. It did not resolve the issue of whether Jorge was an innocent spouse entitled to legal separation.

(5) Caroline wins the legal separation case. Whether or not Jorge raised the affirmative defense that Caroline was also guilty of a ground for legal separation, Jorge is barred from filing a second legal separation case, because the spouses are already legally separated, and because he has himself given ground for legal separation and will not come to court with clean hands.<sup>66</sup>

The first scenario applies in this case. When Caroline's legal separation case against Jorge was dismissed with finality in 2021,<sup>67</sup> it did not completely bar Jorge's cause of action in the second legal separation case. To recall, the RTC and the CA dismissed Caroline's Petition because she failed to prove Jorge's alleged grossly abusive conduct and alleged infidelity.<sup>68</sup> When Jorge filed the second legal separation case, the twin issues of whether Caroline was guilty of any ground for legal separation and whether Jorge was entitled to the remedy of legal separation had not been resolved. Thus, the third requisite of *litis pendentia*—that the identity between the pending actions, with respect to the parties, rights asserted and reliefs prayed for, such that any judgment rendered on one action will, regardless of which is successful, amount to *res judicata* in the action under consideration—is absent.

*Jorge did not commit willful forum shopping in filing the second legal separation case*

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<sup>66</sup> *Id.*

<sup>67</sup> *Rollo*, p. 19.

<sup>68</sup> *Id.* at 224–225.

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Considering that there was *no litis pendentia* in this case, it is clear that Jorge is not guilty of willful forum shopping.<sup>69</sup>

Forum shopping—as opposed to mere failure to comply with the rule on certification of forum shopping—“is committed by a party who institutes two or more suits involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition or increase a party’s chances of obtaining a favorable decision or action.”<sup>70</sup> It is prohibited because “it trifles with the courts, abuses their processes, degrades the administration of justice, and adds to already congested court dockets.”<sup>71</sup>

We find that Jorge did not commit forum shopping, considering that the elements of *litis pendentia* were not present between the first and second legal separation case, and that the final judgment in the first legal separation case would not have, as it did not in fact, amount to *res judicata* in the second.<sup>72</sup> While his omission of the first legal separation case from his Certification against Forum Shopping violated Rule 7, Section 5 of the Rules of Court, we agree with Jorge that this would only have resulted in the dismissal without prejudice of his Petition,<sup>73</sup> a rule of procedure we forego in favor of substantial justice and resolving the case on its merits.<sup>74</sup>

Similarly, the criminal case for adultery Jorge instituted against Caroline before the second legal separation case did not bar Jorge from filing, or the trial court from proceeding to try, the second legal separation case, although the judge of course retains the discretion to stay the proceedings as it deems necessary.<sup>75</sup> It is settled that a civil action for legal separation based on sexual infidelity may proceed ahead of or simultaneously with a criminal action for adultery or concubinage for the same act, even if both the civil and criminal actions arise from or are related to the same offense.<sup>76</sup> This is because a petition for legal separation is not a civil action to enforce the civil liability arising from the offense proscribed by the Rules of Criminal Procedure.<sup>77</sup> Rather, it is aimed at the conjugal rights of the spouses and their relations to each other and intended to obtain the right to live separately from one’s spouse, with all the legal consequences of legal separation.<sup>78</sup>

Neither does the doctrine of prejudicial question apply, considering that (1) the second legal separation case was filed after the criminal case was

<sup>69</sup> See *Tanyag v. Tanyag*, 914 Phil. 150 (2021) [Per J. Leonen, Third Division].

<sup>70</sup> *Heirs of Mampo v. Morada*, 888 Phil. 583, 592–593 (2020) [Per J. Caguioa, First Division]; *City of Taguig v. City of Makati*, 787 Phil. 367, 583 (2016) [Per J. Leonen, Second Division].

<sup>71</sup> *Id.* at 593.

<sup>72</sup> See *Zamora v. Quinan, Jr.*, 821 Phil. 1009, 1017 (2017) [Per J. Peralta, Second Division], citing *Yap v. Chua*, 687 Phil. 392, 398 (2012) [Per J. Reyes, Second Division].

<sup>73</sup> *Rollo*, p. 41. See also RULES OF COURT, Rule 7, sec. 5; *Spouses Melo v. Court of Appeals*, 376 Phil. 204 (1999) [Per J. Mendoza, Second Division].

<sup>74</sup> *Malixi v. Baltazar*, 821 Phil. 423, 439–440 (2017) [Per J. Leonen, Third Division].

<sup>75</sup> See *People v. Camenforte*, 903 Phil. 549, 569 (2021) [Per J. Caguioa, First Division], citing *Quiambao v. Osorio*, 242 Phil. 441 (1988) [Per J. Fernan, Third Division].

<sup>76</sup> *Gandionco v. Peñaranda*, 239 Phil. 692, 696 (1987) [Per J. Padilla, Second Division].

<sup>77</sup> RULES OF COURT, Rule 111, secs. 1 and 2.

<sup>78</sup> *Gandionco v. Peñaranda*, 239 Phil. 692, 696 (1987) [Per J. Padilla, Second Division].

already instituted, and (2) sexual infidelity was only one of the two grounds that Jorge raised to substantiate his Petition for Legal Separation from Caroline.<sup>79</sup>

*While not barred by litis pendencia, legal separation cases subsequently filed by the respondent-spouse in a pending legal separation case are henceforth barred for public policy reasons*

Although we find that the pendency and finality of the first legal separation case did not preclude Jorge's filing of the second legal separation case due to *litis pendencia* or *res judicata*, this Court rules that, henceforth, for reasons of public policy, while one spouse's legal separation case against the other is still being tried, the respondent-spouse's own legal separation case subsequently filed by him or her, shall be dismissed **without prejudice**, subject to the final resolution of the first or preceding case.

As already observed, the State policy underpinning the legal provisions on legal separation is the complete preservation of marriage as a social institution and foundation of the family, including the marital obligations of all spouses to live together, support each other and exercise joint custody over their children, which obligations a decree of legal separation suspends. Proof that the spouses colluded to obtain legal separation warrants not the relief they mutually seek, but a dismissal of the case and the continuity of their marriage, leaving marital obligations and communal property intact.<sup>80</sup>

It is therefore clear that two spouses cannot both ask for legal separation at the same time, despite each one having a right to duly demand and prove their entitlement to it against each other.

The ruling We lay down today is separate and distinct from the existing rule that the respondent-spouse in the first legal or previously filed legal separation case must already raise all grounds for legal separation for which the petitioner-spouse may be guilty of at the time of the first case pursuant to the omnibus motion rule,<sup>81</sup> as we note Jorge did in his Answer to Caroline's Petition for Legal Separation against him.

The respondent-spouse or prosecuting attorney, in case of default, must raise all grounds for legal separation for which the petitioner-spouse may be guilty of in his or her answer or during trial, because this is a ground for dismissal of the petition, either under the *clean hands doctrine* or because the trial court finds in due course that both spouses have given ground for legal separation in contravention of Article 56(4) of the Family Code. On the other hand, if the respondent fails to raise these grounds in the first legal separation case, the spouses may be found guilty of collusion under Article 56(5) which

<sup>79</sup> *Rollo*, p. 140.

<sup>80</sup> FAMILY CODE, art. 56(4).

<sup>81</sup> RULES OF COURT, Rule 15, sec. 9.

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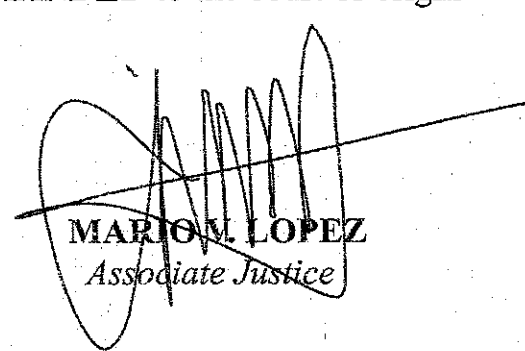
will result in the dismissal of the first legal separation case, while the second or subsequent legal separation case will be barred by *res judicata* by conclusiveness of judgment.<sup>82</sup>

For these reasons, it was grave abuse of discretion for the RTC Branch 3-FC of Makati City to dismiss the second legal separation case with prejudice on the basis of *litis pendentia* and willful forum shopping, and a reversible error for the CA to dismiss Jorge's Petition for *Certiorari* under Rule 65 on the same ground.

In sum, when a spouse files a legal separation case while another is already pending against them, the subsequent case should be dismissed without prejudice based on public policy considerations, although not technically barred by *litis pendentia*. This approach is aligned with the statutory framework governing legal separation and upholds the State's policy of preserving marriage, which is designed to prevent both spouses from simultaneously seeking legal separation.

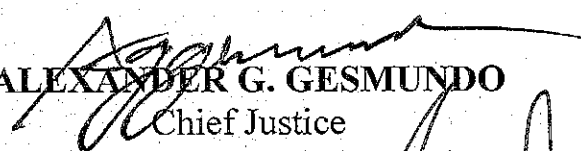
**ACCORDINGLY**, the Petition for Review on *Certiorari* is **GRANTED**. The Resolutions dated March 18, 2021 and May 24, 2023 of the Court of Appeals in CA-G.R. SP No. 168314 are **REVERSED**. The Petition for Legal Separation docketed as Civil Case No. R-MKT-20-01893-CV filed by petitioner Jorge Joaquin V. Santos is **REMANDED** to the court of origin for further proceedings.

**SO ORDERED.**



MARIO M. LOPEZ  
Associate Justice

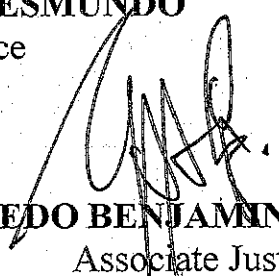
<sup>82</sup> *Republic v. Yu*, 519 Phil. 391, 397 (2006) [Per J. Quisumbing, Third Division].

**WE CONCUR:**

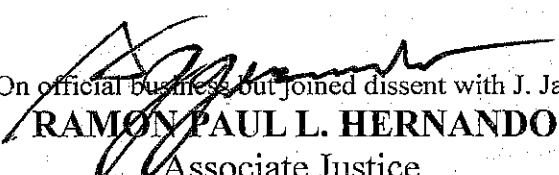
**ALEXANDER G. GESMUNDO**  
Chief Justice



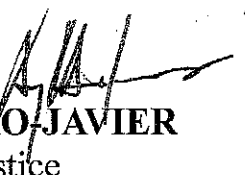
**MARVIC M.V.F. LEONEN**  
Senior Associate Justice



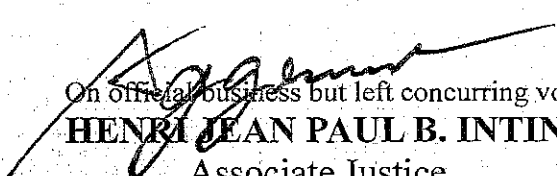
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



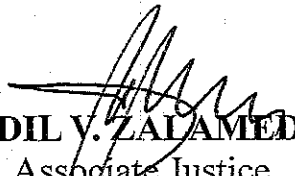
On official business but joined dissent with J. Javier  
**RAMON PAUL L. HERNANDO**  
Associate Justice



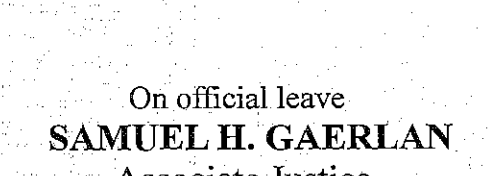
With dissent  
**AMY C. LAZARO-JAVIER**  
Associate Justice



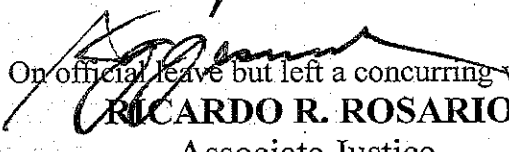
On official business but left concurring vote  
**HENRI JEAN PAUL B. INTING**  
Associate Justice



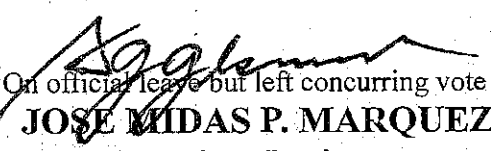
**RODIL V. ZALAMEDA**  
Associate Justice



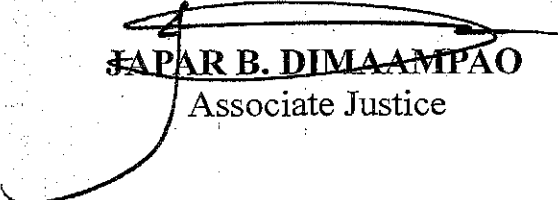
On official leave  
**SAMUEL H. GAERLAN**  
Associate Justice



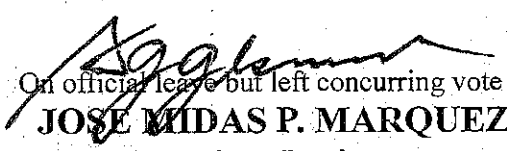
On official leave but left a concurring vote  
**RICARDO R. ROSARIO**  
Associate Justice



On official business  
**JHOSEP Y. LOPEZ**  
Associate Justice



**JAPAR B. DIMAAMPAO**  
Associate Justice



On official leave but left concurring vote  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

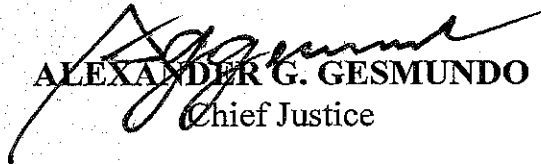


**ANTONIO T. KHO, JR.**  
Associate Justice

On leave  
**MARIA FILOMENA D. SINGH**  
Associate Justice

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of this Court.



ALEXANDER G. GESMUNDO  
Chief Justice